

RESOLUTION NO. 74220

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE VACATING A PUBLIC SERVICE EASEMENT ALONG A PRIVATE STREET, PISTACHE LANE, BETWEEN LEIGH AVENUE AND FOXWORTHY AVENUE**

**WHEREAS**, the vacation of a public service easement along a private street, Pistache Lane, between Leigh Avenue and Foxworthy Avenue described in Section 3 of this Resolution is being conducted pursuant to and in accordance with the provisions of Chapter 3 of Part 3 of Division 9 of the Streets and Highways Code of the State of California; and

**WHEREAS**, on December 18, 2007, the City Council adopted Resolution No. 74175 ("Resolution of Intention") declaring its intention to vacate a public service easement along a private street, Pistache Lane, between Leigh Avenue and Foxworthy Avenue described in Section 3 of this Resolution; and

**WHEREAS**, the Resolution of Intention gave notice that on Tuesday, the 29th day of January, 2008 at 1:30 p.m., in the Council Chambers of the City Council, in the City Hall of the City of San José, the Council would hear any and all persons interested in or objecting to the vacation of said public service easement; and

**WHEREAS**, the Resolution of Intention giving notice of the date, time and place of the public hearing was published in the manner prescribed by law; and

**WHEREAS**, notices of the proposed easement vacation, stating the purpose of the Resolution of Intention and the time and place set for the public hearing, were posted in the manner prescribed by law; and

**WHEREAS**, prior to the public hearing the plat map approved by the Director of Public Works on October 29, 2007, entitled "Plat Map Showing That Portion Of: Public Service Easement Within Tract No. 9903 Recorded In Book 815 Of Maps At Pages 47 To 50, Santa Clara County Records" (hereinafter "Plat Map") and showing the public service easement proposed for vacation, was filed in the Office of the City Clerk and made available for examination by any persons desiring to do so; and

**WHEREAS**, on January 29, 2008, at 1:30 p.m. in the City Council chambers, the City Council heard any and all persons interested in or objecting to the proposed vacation of said public service easement, and received and considered all evidence submitted; and

**WHEREAS**, at the public hearing on the vacation of the public service easement described in Section 3 of this Resolution, the City Council had before it a report from the Director of Public Works to the City Council, dated January 7, 2008, identified as "EXHIBIT A" and incorporated herein, and the Plat Map, identified as "EXHIBIT B" and incorporated herein (hereinafter collectively "the Report").

**NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE:**

**SECTION 1.** The City Council hereby adopts the Report and, based upon the Report and all other evidence submitted at the public hearing, makes the following findings of relevant fact:

- A. This vacation is in conjunction with the construction of 23 single-family detached residential units by LB/L III – Edenbridge II San Jose LLC, and the public service easement described in Section 3 of this Resolution is not needed for public purposes; and
- B. The public service easement described in Section 3 of this Resolution has been superseded by relocation through the document entitled “Grant of Easement Public Service Easement” from LB/L III – Edenbridge II San Jose LLC to the City of San Jose recorded in the official records of the Santa Clara County Recorder on January 25, 2008 as Document No. 19722881; and
- C. This resolution does not affect the property rights granted to the City of San Jose in the “Grant of Easement Public Service Easement” from LB/L III – Edenbridge II San Jose LLC to the City of San Jose recorded in the official records of the Santa Clara County Recorder on January 25, 2008 as Document No. 19722881; and
- D. All affected public utilities have been contacted and have no objections to the proposed vacation.

**SECTION 2.** The City Council makes the following conclusions and finding based upon an analysis of the above facts:

- A. The public service easement described in Section 3 of this Resolution and depicted in the Plat Map is not necessary for present or prospective public street purposes because it has been superseded by relocation; and
- B. The proposed vacation is consistent with the City’s General Plan.

**SECTION 3.** Based on the above stated facts, conclusions and findings, the City Council hereby vacates the public service easement along a private street, Pistache Lane, between Leigh Avenue and Foxworthy Avenue.

The public service easement to be vacated is all that certain real property more particularly described as follows:

815 of Maps within the City of follows: Being westerly lines of and near the 9903. Lying within Lots 1 through 23 of Tract No. 9903 recorded in Book at pages 47 through 50, Santa Clara County Records, and lying San Jose, County of Santa Clara, California, and described as those areas delineated and designated as "2.5' PSE" near the Lots 1 through 9, near the northerly lines of Lots 10 through 12 easterly lines of Lots 13 through 23, on said map of Tract No. 9903.

Specifically excluded from this vacation is the real property granted to the City of San Jose in the "Grant of Easement Public Service Easement" from LB/L III – Edenbridge II San Jose LLC to the City of San Jose recorded in the official records of the Santa Clara County Recorder on January 25, 2008 as Document No. 19722881.

SECTION 4. The City Clerk is directed to record a certified copy of this Resolution in the Santa Clara County Recorder's Office.

SECTION 5. From and after the date this Resolution is recorded, the easement vacated will no longer constitute a public service easement.

ADOPTED this 29<sup>th</sup> day of January, 2008, by the following vote:

ES: AY CAMPOS, CHIRCO, CHU, CORTESE, LICCARDO,  
NGUYEN, OLIVERIO, PYLE, WILLIAMS; REED

OES: N NONE

SENT: AB CONSTANT

SQUALIFIED: DI NONE

ATTEST:

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CHUCK REED  
Mayor

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LEE PRICE, MMC  
City Clerk

